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IN THE

Supreme Court of the United States

OCTOBER TERM 1930.

No. 618.

THE UNITED STATES OF AMERICA,
EX RELATIONE ETHEL M. McLENNAN,
Petitioner,
vs.
RAY LYMAN WILBUR, Secretary of the Interior,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May It Please the Court:

The undersigned, as counsel for the State of Colorado, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiae.

CLARENCE L. IRELAND,
Attorney General of the State of Colorado.

Of Counsel:
PETER Q. NYCE.

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Respondent.

BRIEF OF CLARENCE L. IRELAND, ATTORNEY GENERAL OF COLORADO AS AMICUS CURIAE.

PRELIMINARY STATEMENT.

The State of Colorado is vitally interested in the outcome of this litigation for the following reasons:

Section 35 of the Act of February 25, 1920, here in controversy, provides as follows:

> "That 10 per centum of all money received from sales, bonuses, royalties, and rentals under the provisions of this Act, excepting those from

Alaska, shall be paid into the Treasury of the United States and credited to miscellaneous receipts; for past production 70 per centum, and for future production 52½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress, known as the Reclamation Act, approved June 17, 1902, and for past production 20 per centum, and for future production 37½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act from lands within the naval petroleum reserves shall be deposited in the Treasury as 'Miscellaneous receipts.'"

41 U. S. Statutes at Large, 450.

In 1925, the Colorado General Assembly enacted a statute providing, in substance, that of the revenues received by the state pursuant to said Section 35, two-thirds (2/3) should be apportioned to the divers counties wherein such revenues originated, to be used in the construction and maintenance of public highways, and that the remaining one-third (1/3) of such revenues should be paid over to the Colorado State School of Mines for such uses as the Board of Control thereof may determine. (See Session Laws of Colorado, 1925, Chapter 138, pages 386-387.) Such Act is still in force and effect.

Since the passage of the Act of February 25, 1920, and up to June 30, 1930, there has been paid to the State of Colorado from receipts from oil and gas under the Act the sum of $119,156.09.

The total receipts to the Government on account of oil and gas under the mineral Leasing Act of February 25, 1920, up to June 30, 1930, amounted to $336,002.18.

Less than 3 per cent of the oil of the United States is produced in the Rocky Mountain States. The question of conservation is not involved in the instant litigation. The suspension of the Leasing Act by the Secretary on conservation grounds is not tenable.

Within the borders of the State of Colorado, there are many thousands of acres of undeveloped public lands of the United States which are subject to prospecting and leasing under the terms of said Act of February 25, 1920, and which are believed by competent authorities to contain oil and gas in vast quantities which could and would be produced and marketed with sufficient profit to induce the development of said lands, unless prohibited by the action of the Secretary of the Interior as complained of by petitioner in this litigation; and that within the borders of said state there are in excess of 8,027,468 acres of such public lands subject to the terms of said Act of Congress of February 25, 1920.

Such lands would be persistently and energetically prospected and steadily developed, were it not for the alleged withdrawal orders of the respondent complained of in this litigation. The effect of such orders is, therefore, to unduly retard the development of these immense natural resources of the state, as well as of other industries which would be fostered by the

development and use of these resources. The result is to seriously affect the growth, well-being and prosperity of this state and of its people, and to deprive the state of the very considerable revenues which, through the development of said natural resources, would accrue to it under said Section 35.

Revenue Derived from Taxes on Tangible Property Within Colorado Used in Operations under Permits Authorized by the Leasing Bill.

It is estimated that in conducting operations under permits and leases on the public lands, permittees, lessees and operators have expended approximately five million dollars. The majority of this vast amount of money has been invested in property used in drilling operations. Such property is subject to tax by the State and produces revenue. The change in policy in the matter of issuing oil and gas permits has resulted in a burden to Colorado, because of the loss of revenue from such taxable property.

Employment.

Operations conducted under permits and leases issued under the Leasing Act, provide enployment for a vast number of men. The suspension of the Act by the Secretary has stopped much of such employment, thus adding to the unemployment situation not only in Colorado, but in other states.

Application for Permit is Property.

The proceedings in the Department as shown by Orders Nos. 337 and 338 were had upon the theory that the Secretary of the Interior had the authority

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CHARLES ELMORE CROPLEY
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RAY LYMAN WILBUR, Secretary of the Interior,
Respondent.

MOTION OF CLARENCE L. IRELAND, ATTORNEY GENERAL OF THE STATE OF COLORADO, FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE, AND BRIEF OF AMICUS CURIAE.

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